

1 Britta E. Warren, OSB No. 065441
bew@bhlaw.com
2 BLACK HELTERLINE LLP
805 S.W. Broadway, Suite 1900
3 Portland, OR 97205
Telephone: (503) 224-5560
4 Fax: (503) 224-6148

5 Of Attorneys for Defendants
6
7
8

9 UNITED STATES BANKRUPTCY COURT
10 FOR THE DISTRICT OF OREGON

11 In re

12 Berjac of Oregon,

13 Debtor.

Case No. 12-63884-tmr7

Adv. Proc. No. 14-06136-tmr

14
15 Thomas A. Huntsberger, Trustee of the
Chapter 7 Bankruptcy Estate of Berjac of
16 Oregon,

Plaintiff,

DEFENDANTS' ANSWER AND
AFFIRMATIVE DEFENSES

17 v.

18 WAYNE E. RHYNARD, JR., an individual;
19 and ALIDA D. RHYNARD, an individual,

20 Defendants.

21 For their answer to Plaintiff Thomas A. Huntsberger, Trustee of the Chapter 7
22 Bankruptcy Estate of Berjac of Oregon's (the "Plaintiff") Complaint (the "Complaint")
23 herein, Defendants Wayne E. Rhynard, Jr. and Alida D. Rhynard ("Defendants") admits,
24 denies, and alleges as follows:

1. 1

2 With respect to Paragraph 1 of the Complaint, Defendants admit the court has
3 jurisdiction over this proceeding and that venue is appropriate in this judicial district.
4 Defendants are without sufficient knowledge or information sufficient to either admit or deny
5 the remaining allegations in Paragraph 1, and therefore deny the same.

2. 6

7 With respect to Paragraph 2 of the Complaint, Defendants admit that Berjac of
8 Oregon (“Debtor”) filed a voluntary petition under Chapter 11 of the Bankruptcy Code and
9 that case was converted to one under Chapter 7. Defendants are without sufficient
10 knowledge or information sufficient to either admit or deny the remaining allegations in
11 Paragraph 2, and therefore deny the same.

3. 12

13 With respect to Paragraph 3 of the Complaint, Defendants admit that Plaintiff
14 has been appointed as the Chapter 7 Trustee, but lack sufficient knowledge or information
15 sufficient to either admit or deny the remaining allegations in Paragraph 3, and therefore
16 deny the same.

4. 17

18 With respect to Paragraph 4 and 5 of the Complaint, Defendants admit that
19 each is an individual, but deny the remaining allegations set forth in Paragraphs 4 and 5.

5. 20

21 Defendants neither admit nor deny the reference contained in Paragraph 6 of
22 the Complaint.

6. 23

24 With respect to Paragraph 7 of the Complaint, Defendants admit they

1 withdrew funds from their investment account held by Debtor prior to the Debtor's
2 bankruptcy filing. Defendants deny the remaining allegations contained in Paragraph 7.

3 7.

4 With respect to Paragraph 8 of the Complaint, Defendants incorporate by
5 reference the prior responses to the paragraphs re-alleged, and incorporate such admissions
6 and denials as if set forth in full.

7 8.

8 Defendants deny the allegations set forth in Paragraph 9 of the Complaint.

9 9.

10 Defendants deny the allegations set forth in Paragraph 10 of the Complaint.

11 10.

12 With respect to Paragraphs 11 and 12 of the Complaint, Defendants lack
13 sufficient knowledge or information sufficient to either admit or deny the allegations, and
14 therefore deny the same.

15 11.

16 With respect to Paragraph 13 of the Complaint, Defendants admit they
17 withdrew funds from their investment account held by the Debtor on June 20, 2012 and July
18 13, 2012, but deny the remaining allegations set forth in Paragraph 13.

19 12.

20 Defendants deny the allegations set forth in Paragraph 14 of the Complaint.

21 13.

22 With respect to Paragraph 15 of the Complaint, Defendants incorporate by
23 reference the prior responses to the paragraphs re-alleged, and incorporate such admissions
24 and denials as if set forth in full.

14.

Except as expressly admitted above, Defendants deny the allegations set forth in Paragraph 16 of the Complaint.

15.

Unless expressly admitted above, Defendants deny each and every other allegation of in the Complaint.

AFFIRMATIVE DEFENSES

**FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)
(Fed. R. Bankr. Proc. 7012(b)(6))**

16.

The Plaintiff has failed to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE
(Recoupment)**

17.

Defendants are entitled to recoup deposits made into their investment account held by the Debtor against the Debtor's subsequent claims, as the claims arose out of the same transaction or occurrence.

**THIRD AFFIRMATIVE DEFENSE
(Set Off)
(11 U.S.C. § 553)**

18.

Defendants are entitled to set off from any monies to which Plaintiff may recover on behalf of the Debtor.

.....

.....

.....

FOURTH AFFIRMATIVE DEFENSE
(Contemporaneous Exchange for New Value)
(11 U.S.C. § 547(c)(1))

19.

One or more of the payments made to Defendants were intended by the Debtor and Defendants to be contemporaneous exchanges for new value given by Defendants to the Debtor and were, in fact, substantially contemporaneous exchanges.

FIFTH AFFIRMATIVE DEFENSE
(Ordinary Course)
(11 U.S.C. § 547(c)(2))

20.

All payments Defendants received were made in the ordinary course of business or financial affairs of the Debtor and Defendants, or were made according to ordinary business terms.¹

WHEREFORE, Defendants having fully responded to the Plaintiff's Complaint, prays for judgment in their favor on Plaintiff's Complaint in its entirety, for costs and disbursements incurred herein, and for such other and further relief as the Court deems just and equitable.

DATED this 11th day of September, 2014.

BLACK HELTERLINE LLP

By: /s/ Britta E. Warren
Britta E. Warren, OSB No. 065441
bew@bhlaw.com
Fax: (503) 224-6148
Of Attorneys for Defendants

¹ Defendants are aware of Plaintiff's position that the Debtor operated a Ponzi scheme, making all transfers outside of ordinary business practices. However, until Plaintiff can substantiate such position, Defendants will assert the ordinary course defense.

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing
DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES upon the Debtor and
Debtor's attorney via first-class mail, postage prepaid, on the date set forth below at the
address below:

Berjac of Oregon
POB 40266
Eugene, OR 97404

Keith Y. Boyd, Esq.
The Law Offices of Keith Y. Boyd
724 S. Central Avenue, Suite 106
Medford, OR 97501
ecf@boydlegal.net
Of Attorneys for Debtor

I hereby also certify that I served a true and correct copy of the foregoing
DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES upon the attorneys for
Plaintiff via ECF and first-class mail, postage prepaid, on the date set forth below at the
address below:

Thomas A. Gerber, Esq.
Brent G. Summers, Esq.
150 S.W. Harrison Street, Suite 200
Portland OR 97201
tom.gerber@tnslaw.net
brent.summers@tnslaw.net
Of Attorneys for Plaintiff

DATED this 11th day of September, 2014.

BLACK HELTERLINE LLP

By: /s/ Britta E. Warren
Britta E. Warren, OSB No. 065441
bew@bhlaw.com
Fax: (503) 224-6148
Of Attorneys for Defendants